

## RESOLUTION NO. 2015-92

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING TRANSFER OF DEVELOPMENT NO. TD2015-001 (PA 2015-109)

**WHEREAS**, an application was filed by The Irvine Company, LLC ("Irvine Company"), with respect to property located within Newport Center requesting approval of a transfer of development from the Corporate Plaza and Corporate Plaza West Planned Communities to the North Newport Center Planned Community Block 100;

**WHEREAS**, The Irvine Company proposes to transfer 15,468 square feet of office intensity from the Corporate Plaza Planned Community and 5,693 square feet of office intensity from Corporate Plaza West Planned Community to the North Newport Center Planned Community Block 100;

**WHEREAS**, General Plan Policy LU 6.14.3 allows development rights to be transferred within Newport Center as long as the transfer is consistent with the intent of the General Plan and will not result in any adverse traffic impacts. The Newport Center Planned Community Development Plan includes procedures that implement General Plan Policy LU 6.14.3 that requires transfers to be trip neutral;

**WHEREAS**, the General Plan designates the recipient site Block 100 and Corporate Plaza, one of two donor sites, as CO-R (Regional Commercial Office) that are intended to provide for administrative and professional offices that serve local and regional markets with limited accessory retail, financial, service, and entertainment uses. Corporate Plaza West, the second donor site, is designated CO-G (General Commercial Office), which is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses; hotels, motels, and convalescent hospitals are not permitted. The transfer of office development intensity with no change of land use is consistent with the land use designations of the General Plan;

**WHEREAS**, a trip transfer analysis titled *North Newport Center Trip Transfer No. 8* (Stantec Consulting Services Inc., August 5, 2015) was prepared for the transfer of development application in compliance with General Plan Policy LU 6.14.3 and the North Newport Center Planned Community Development Plan. The proposed transfer is a transfer of office uses on a square foot per square foot basis and does not include a conversion of land uses. The trip transfer analysis found the transfer is trip neutral and would not generate a significant impact to area intersections;

**WHEREAS**, the Planning Commission considered The Irvine Company's application on September 17, 2015, at a duly noticed public hearing. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at the hearing. At the conclusion of the hearing, the Planning Commission voted, 5 ayes, 0 noes, 2 absent, to recommend City Council approval of Transfer of Development No. TD2015-001; and

**WHEREAS**, a public hearing was held on October 27, 2015, in the City Hall Council Chambers, located at 100 Civic Center Drive, Newport Beach, California. Notice of this hearing was provided in accordance with the Municipal Code for the consideration of Zoning Code Amendments and was published in the Daily Pilot and the item was shown on the agenda for this meeting, which was posted at City Hall and on the City website. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

**NOW THEREFORE**, the City Council of the City of Newport Beach hereby resolves as follows:

**Section 1:** The recitals provided above are true and correct and are incorporated into the operative part of this resolution.

**Section 2:** The City Council of the City of Newport Beach hereby approves Transfer of Development No. TD2015-001 consisting of: (i) the transfer 15,468 square feet of office intensity from Corporate Plaza to the North Newport Center Planned Community Block 100, and (ii) the transfer 5,693 square feet of office intensity from Corporate Plaza West to the North Newport Center Planned Community Block 100, subject to the conditions of approval contained in Exhibit A, which is incorporated herein by reference.

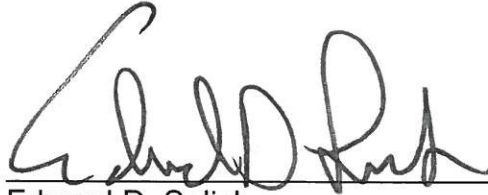
**Section 3:** The City Council finds this transfer of development exempt from and not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (General Rule) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3. It can be seen with certainty that there is no possibility that the project could have a significant effect on the environment. No development would be authorized and all development within the affected planned communities is within the limits of the General Plan. The transfer of unbuilt development to Block 100 of the North Newport Center Planned Community will allow the continued use of an existing building and no new development would result. The traffic analysis prepared under the supervision of the City Traffic Engineer concludes the transfer is trip neutral and no significant impact to traffic would result.

**Section 4:** The City Council finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

**Section 5:** If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 6:** This resolution shall take effect immediately upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

**ADOPTED** this 27<sup>th</sup> day of October, 2015.



Edward D. Selich  
Mayor

ATTEST:



Leilani I Brown  
City Clerk



## Exhibit A

## Condition of Approval

1. To the fullest extent permitted by law, The Irvine Company shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the North Newport Center Amendments and Transfer of Development (PA2015-109). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

STATE OF CALIFORNIA                    }  
COUNTY OF ORANGE                   }  
CITY OF NEWPORT BEACH               }       ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2015-92 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 27<sup>th</sup> day of October, 2015, and that the same was so passed and adopted by the following vote, to wit:

AYES:     Council Member Peotter, Council Member Duffield, Council Member Muldoon,  
            Mayor Pro Tem Dixon, Mayor Selich  
NAYS:     None  
RECUSED:  Council Member Petros  
ABSENT:   Council Member Curry

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 28<sup>th</sup> day of October, 2015.



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City Clerk  
Newport Beach, California

(Seal)

